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INSURANCE REFORM

1972

REPORT NO. 42
To the 43rd Legislative Assembly

MONTANA LEGISLATIVE COUNCIL
State Capitol
Helena, Montana



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INSURANCE REFORM

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PREFACE

President Nixon has made the following statement about no-fault insurance.

Some problems clearly require Federal remedies, and we have moved to provide them. Many other matters, however, can be handled most effectively by State and local governments, with Washington acting in a supporting role.

On one such important matter, I believe that the States--and not the Federal Government--can best respond to one of the most pressing consumer needs in the Nation today: the urgent question of reform for the present system of automobile insurance. I oppose involving the Federal Government in this insurance reform, and I urge the States to act.

Despite ever-increasing premiums for automobile insurance, the victims of accidents frequently receive inadequate compensation and usually experience harmful delays in the courts.

The best-known alternative to this inefficient and inequitable reparations system is the "no-fault" automobile insurance concept--which provides, in general, that an accident victim's losses are covered by his own insuring company no matter who caused the accident.

I have endorsed this system because I consider it to be a vast improvement and a genuine reform for the benefit of the consuming public.

No-fault insurance is an idea whose time has come. The concept has been gaining wide acceptance, despite the fact that some powerful groups--with a special interest in maintaining the present system--have arrayed themselves against reform.

The achievement of real automobile insurance reform through adoption of the no-fault principles would be a particularly effective way of demonstrating the responsiveness and farsightedness of State Governments. I commend those States which already have moved on this important question. I urge that the other States, building on the

experience gained so far, make the enactment of no-fault automobile insurance a matter of top consumer priority.¹

¹"Text of the President's Telegram to Governor Arch A. Moore, Jr., Chairman of the National Governors' Conference Meeting in Houston, Texas, June 7, 1972," Richard M. Nixon, Weekly Compilation of Presidential Documents, June 12, 1972, p. 1002-1003.

RECOMMENDATION

The Montana Legislative Council recommends:

1. *That the bill providing for motor vehicle insurance reform and personal and property protection insurance on a no-fault basis be enacted by the 43rd Legislative Assembly.*

HOUSE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE COUNCIL CONDUCT A STUDY OF THE FEASIBILITY OF ADOPTING A NO-FAULT MOTOR VEHICLE INSURANCE PLAN AND REPORT ITS FINDINGS TO THE FORTY-THIRD LEGISLATIVE ASSEMBLY.

WHEREAS, the legislative assembly has the ultimate duty to the people of Montana to maximize physical, mental and economic security from the growing social problem of increasing injuries, deaths and financial hardships due to increasing motor vehicle operations; and

WHEREAS, application and enforcement of prevailing laws, utilization of available motor vehicle insurance and delays and expense in settlements combine to prevent, delay or abort protection, compensation or relief where deserved, by individuals, whether or not they may be at fault in motor vehicle accidents; and

WHEREAS, corrective legislation of this magnitude deserves in-depth and careful consideration prior to adaption and adoption.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council is requested to conduct a detailed study of the several statutes and constitutional rights bearing on ways--of compensating motor vehicle accident victims, in Montana, and then submit a written report of findings, together with necessary implementing legislation for consideration by the forty-third legislative assembly.

INTRODUCTION

In compliance with House Joint Resolution No. 29, the Legislative Council's Insurance Subcommittee held several meetings with both proponents and opponents of the concept of no-fault insurance. Many of the no-fault plans were studied which have been proposed and those which have been enacted by various states.

After doing this research, it was concluded that no-fault insurance is a viable concept and a motor vehicle insurance reform bill was drafted which would bring no-fault insurance to the people of Montana. The bill provides for a comprehensive system of motor vehicle insurance consisting of five different types of insurance. The basic coverage, personal and property protection insurance, is mandatory and provides benefits on a first-party basis without regard to fault. The other types of insurance are left to the discretion of the vehicle owner. They provide coverage for damage to motor vehicles on a no-fault basis, protect those involved in motor vehicle accidents from court actions seeking recovery of general damages (pain and suffering) and provide a source of recovery for general damages to people who are injured by uninsured motorists.

The five types of insurance coverage within the subcommittee's motor vehicle insurance system are (1) mandatory personal and property protection insurance, (2) mandatory residual motor vehicle liability insurance which provides coverage for Montana motorists involved in accidents in states which do not have no-fault insurance, (3) optional no-fault coverage for property damage to motor vehicles and their contents, (4) optional liability coverage to protect motorists from suits for general damages arising from motor vehicle accidents, and (5) optional uninsured motorist coverage to provide a source of recovery to those who suffer damages arising from accidents involving vehicles which are not covered by liability insurance.

PERSONAL AND PROPERTY PROTECTION INSURANCE

This insurance coverage is the major feature of the Council's insurance reform. Before an individual is allowed to register a motor vehicle or obtain or renew his operator's license, he must present a certificate of insurance provided by an agent of an insurance company authorized to sell personal and property protection insurance in Montana. Insurance companies are required to inform the highway patrol supervisor of all policies which are canceled or not renewed. The supervisor then has the authority to revoke and obtain possession of the motor vehicle registration, license plates and operator's license for all those named in the defunct insurance policy. (See Appendix A, Section 13)

Personal and property protection insurance will provide the following benefits on a first-party basis without regard to fault. All reasonable medical expenses and all reasonable rehabilitation expenses will be paid by the injured party's insurer without limit. Actual wages lost less fifteen percent will be paid for an unlimited period of time. However, the maximum benefit paid will be \$750 per month. Funeral expenses to a maximum of \$1,000 will also be paid. (See Appendix A, Section 16)

Damage to tangible property other than automobiles and their contents will be paid on a no-fault basis subject to a five hundred thousand dollar maximum limit. (See Appendix A, Section 17)

Special damages for economic loss (medical and rehabilitation expenses, lost wages, funeral expenses and property damage) cannot be the subject of tort suits if they have been paid by a personal and property protection insurer or would have been paid if such a policy had been in force at the time of the accident. This will prevent multiple recovery for economic loss and also serve as a further inducement for people to protect themselves against loss incurred through motor vehicle accidents. If a person involved in an accident is operating an uninsured motor vehicle in defiance of the compulsory insurance law, he cannot collect for his economic loss through court action. (See Appendix A, Section 16)

RESIDUAL LIABILITY INSURANCE

Each policy of personal and property protection insurance must also include residual liability insurance to protect Montana motorists who are involved in accidents in states which do not have no-fault insurance. Insurers must agree to provide this residual liability insurance in the dollar limits required by the financial responsibility laws of the state in which the accident occurs. (See Appendix A, Section 18)

PROPERTY INSURANCE FOR MOTOR VEHICLES AND THEIR CONTENTS

Motor vehicle owners may insure their vehicles against damage. No tort action will be permitted for this type of damage. Therefore, each owner can be sure that only if he purchases this type of property insurance will damage to his vehicle be compensated. The removal of tort action provides that this insurance will be on a first-party, no-fault basis. As with present collision and comprehensive insurance, this type of policy will be subject to any deductible to which the owner and the insurer agree. (See Appendix A, Section 21)

MOTOR VEHICLE LIABILITY INSURANCE

Access to tort action for general damages (pain and suffering, etc.) will be permitted under this system. Therefore, motorists may wish to protect themselves from lawsuits for general damages arising out of accidents caused by their negligence. By purchasing an optional policy of motor vehicle liability insurance, vehicle owners will be able to protect their assets from awards for general damages. (See Appendix A, Section 11)

UNINSURED MOTORIST COVERAGE

Since some people will not purchase optional liability insurance, a person may wish to have a source of recovery for general damages resulting from an accident caused by another person's negligence. This insurance system raises the maximum limits for uninsured motorist coverage to fifty thousand dollars for injury or death of one person and one hundred thousand dollars for injury or death to two or more people. If a negligent party has no liability insurance and no appreciable assets, uninsured motorist coverage will enable the innocent accident victim to recover general damages. (See Appendix A, Section 2)

SUMMARY

The insurance reform bill will enable motorists to recover almost all of their economic loss if they are injured in motor vehicle accidents. The required personal and property protection insurance will pay for all economic loss except wage loss over \$750 per month and damage to motor vehicles and their contents. This insurance provides coverage on a no-fault basis and bars tort action for economic loss already compensated by insurance.

Insurance coverage for damage to automobiles and their contents is also on a no-fault basis but is left to the discretion of the vehicle owner. No tort action will be permitted for damage to motor vehicles and their contents.

The insurance reform bill provides for a comprehensive system of motor vehicle insurance. Coverage of economic loss, for the most part, is provided without regard to fault. However, negligent actions will still be a basis for tort recovery for general damages.

APPENDIX A

_____ BILL NO. _____

INTRODUCED BY _____

40-4403, 53-418, 53-421 through 53-428, 53-430 through 53-436, 53-438 through 53-450, 53-452, 53-455

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS 40-4403, 53-418, 53-421, 53-428, 53-430 THROUGH 53-434, 53-438, AND 53-448 THROUGH 53-450, R.C.M. 1947; TO REMOVE THE REQUIREMENTS OF THE FINANCIAL RESPONSIBILITY LAWS AND TO REQUIRE PERSONAL AND PROPERTY PROTECTION MOTOR VEHICLE INSURANCE AS A CONDITION FOR REGISTERING A MOTOR VEHICLE AND OBTAINING AN OPERATOR'S OR CHAUFFEUR'S LICENSE; TO PROVIDE FOR PERSONAL AND PROPERTY PROTECTION MOTOR VEHICLE INSURANCE WITH BENEFITS PAYABLE ON A FIRST-PARTY BASIS; TO BAR RECOVERY FOR DAMAGE TO MOTOR VEHICLES IN CERTAIN INSTANCES; TO REPEAL SECTIONS 53-422 THROUGH 53-427, 53-435, 53-436, 53-439 THROUGH 53-447, 53-452 AND 53-455, R.C.M. 1947; AND TO PROVIDE FOR AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. The purpose of this act is to provide a means of requiring personal and property protection motor vehicle insurance as a condition for registering a motor vehicle or obtaining an operator's or chauffeur's license and a means of promptly and equitably compensating persons for accidental bodily injury and property damage arising from the ownership, operation, maintenance or use of motor vehicles, in lieu of tort liability.

Section 2. Section 40-4403, R.C.M. 1947, is amended to read as follows:

"40-4403. Motor vehicle liability policies to include uninsured motorist coverage--rejection of coverage by insured. No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle, shall be delivered or issued for delivery in this state, with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided therein or supplemental thereto, in limits ~~for-bodily-injury-or-death-set-forth-in-section~~ 53-422, exclusive of interest and costs, of not less than fifty thousand dollars (\$50,000) because of bodily injury to or

death of one person in any one accident and, subject to said limit for one person, to a limit of not less than one hundred thousand dollars (\$100,000) because of bodily injury to or death of two or more persons, under provisions filed with and approved by the insurance commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided, that the named insured shall have the right to reject such coverage; and, provided further, that unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with the policy previously issued to him by the same insurer."

Section 3. Section 53-418, R.C.M. 1947, is amended to read as follows:

"53-418. Definitions. The following words and phrases, when used in this act shall, for the purposes of this act, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

1. "Supervisor" -- The highway patrol supervisor and his executive assistant.

2. "Board" -- The Montana highway patrol board.

3. "Registrar" -- The registrar of motor vehicles of this state.

4. "Judgment" -- Any judgment that shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

5. "License" -- Any license, temporary instruction permit or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.

6. "Motor vehicle" -- Every self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles (except traction engines, road rollers, farm tractors, tractor cranes, power shovels, and well driller) and every vehicle which is

propelled by electric power obtained from overhead wires but not operated upon rails.

7. "Nonresident" -- Every person who is not a resident of this state.

8. "Nonresident's operating privilege" -- The privilege conferred upon a nonresident by the laws of this state pertaining to the operation by him of a motor vehicle, or the use of a motor vehicle owned by him, in this state.

9. "Operator" -- Every person who is in actual physical control of a motor vehicle.

10. "Owner" -- A person who holds the legal title of a motor vehicle, or in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof, with the right of purchase upon performance of the conditions stated in the agreement, and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purposes of this act.

11. "Person" -- Every natural person, firm, copartnership, association or corporation.

~~12. -- "Proof of financial responsibility" --- Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of ten thousand dollars (\$10,000) because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of twenty thousand dollars (\$20,000) because of bodily injury to or death of two or more persons in any one accident, and in the amount of five thousand dollars (\$5,000) because of injury to or destruction of property of others in any one accident.~~

~~13.~~ 12. "Registration" -- Registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles.

~~14.~~ 13. "State" -- Any state, territory or possession of the United States, the District of Columbia, or any province of the Dominion of Canada."

Section 4. Section 53-421, R.C.M. 1947, is amended to read as follows:

"53-421. Report required following accident. In addition to the reports required under chapter 12, Title 32 of the R.C.M. 1947, the operator of any motor vehicle which is in any manner involved in an accident within this state, in which

any person is killed or injured or in which damage to the property of any one person in excess of two hundred and fifty dollars (\$250) is sustained, shall within ten (10) days after such accident report the matter in writing to the supervisor. Such report, the form of which shall be prescribed by the supervisor, shall contain information to enable the supervisor to determine whether the requirements for the deposit of security under section 53-422-are-inapplicable-by-reason-of-the-existence-of-insurance-or-other-exceptions-specified-in-this-act 15 of this act have been fulfilled. The supervisor may rely upon the accuracy of the information unless and until he has reason to believe that the information is erroneous. If such operator be physically incapable of making such report, then any person may do so for and on his behalf. The operator or the owner shall furnish such additional relevant information as the supervisor shall require."

Section 5. Section 53-428, R.C.M. 1947, is amended to read as follows:

"53-428. Matters not to be evidence in civil suits. ~~Neither the~~ The report required by section 53-421, ~~the action taken by the supervisor pursuant to this act, the findings, if any, of the supervisor upon which such action is based, nor the security filed as provided in this act~~ shall not be referred to in any way, nor be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages."

Section 6. Section 53-430, R.C.M. 1947, is amended to read as follows:

"53-430. Suspension for nonpayment of judgments -- exceptions. (a) The supervisor, upon the receipt of a certified copy of a judgment, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section and in section 53-433.

(b) If the judgment creditor consents in writing, in such form as the supervisor may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the supervisor, in his discretion, for six (6) months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in section 53-433 provided the judgment debtor furnishes proof of financial responsibility."

Section 7. Section 53-431, R.C.M. 1947, is amended to read as follows:

"53-431. Suspension to continue until judgments paid and proof given. Such license, registration and nonresident's

operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be there-
after issued in the name of such person, including any such
person not previously licensed, unless and until every such
judgment is stayed, satisfied in full or to the extent herein-
after provided ~~and-until-the-said-person-gives-proof-of-finan-~~
~~cial-responsibility-subject-to-the-exemptions-stated-in-sec-~~
~~tions-53-430-and-53-433.~~

A discharge in bankruptcy following the rendering of any
such judgment shall not relieve the judgment debtor from any
of the requirements of this act."

Section 8. Section 53-432, R.C.M. 1947, is amended to
read as follows:

"53-432. Satisfaction of judgments. Judgments herein
referred to shall, for the purposes of this act only, be
deemed satisfied:

1. when ten thousand dollars (\$10,000) has been credited
upon any judgment or judgments rendered in excess of that a-
mount because of bodily injury to or death of one person as
the result of any one accident; or

2. when, subject to such limit of ten thousand dollars
(\$10,000) because of bodily injury to or death of one person,
the sum of twenty thousand dollars (\$20,000) has been credited
upon any judgment or judgments rendered in excess of that a-
mount because of bodily injury or death of two or more persons
as the result of any one accident; or

~~3.--when-five-thousand-dollars-(\$5,000)-has-been-credited~~
~~upon-any-judgment-or-judgments-rendered-in-excess-of-that-a-~~
~~mount-because-of-injury-to-or-destruction-of-property-of~~
~~others-as-a-result-of-any-one-accident;~~

Provided, however, payments made in settlement of any
claims because of bodily injury, or death ~~or-property-damage~~
arising from a motor vehicle accident shall be credited in re-
duction of the amounts provided for in this section."

Section 9. Section 53-433, R.C.M. 1947, is amended to
read as follows:

"53-433. Installment payment of judgments -- default.

(a) A judgment debtor upon due notice to the judgment creditor
may apply to the court in which such judgment was rendered
for the privilege of paying such judgment in installments and
the court, in its discretion and without prejudice to any
other legal remedies which the judgment creditor may have,
may so order and fix the amounts and times of payment of the
installments.

(b) The supervisor shall not suspend a license, or request

and require of the registrar the suspension of a registration or a nonresident's operating privilege, and shall restore any license, and request and require of the registrar the restoration of the registration or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor ~~gives-proof-of-financial-responsibility-and~~ obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

(c) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the supervisor shall forthwith suspend the license, and shall request and require of the registrar the suspension of the registration or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this act."

Section 10. Section 53-434, R.C.M. 1947, is amended to read as follows:

"53-434. Proof required upon certain convictions. (a) Whenever the supervisor or the board, under any of the laws of this state, revokes the license of any person upon receiving record of a conviction or a forfeiture of bail, the supervisor or the board, shall also request and require of the registrar the suspension of the registration for all motor vehicles registered in the name of such person ~~except-that-the-registrar-shall not-suspend-such-registration,-unless-otherwise-required-by-law, if-such-person-has-previously-given-or-shall-immediately-give and-thereafter-maintain-proof-of-financial-responsibility-with respect-to-all-motor-vehicles-registered-by-such-person.~~

(b) Such license shall remain revoked and such registration shall remain suspended and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person until permitted under the motor vehicle laws of this state ~~and-not-then-unless-and until-he-shall-give-and-thereafter-maintain-proof-of-financial responsibility.~~

~~(c)--If-a-person-is-not-licensed,-but-by-the-final-order or-judgment-is-convicted-of-or-forfeits-any-bail-or-collateral deposited-to-secure-an-appearance-for-trial-for-any-offense requiring-the-revocation-of-a-license,-no-license-shall-be thereafter-issued-to-such-person-and-no-motor-vehicle-shall continue-to-be-registered-or-thereafter-be-registered-in-the name-of-such-person-until-he-shall-give-and-thereafter-maintain-proof-of-financial-responsibility-~~

~~(d)--Whenever-the-supervisor-or-the-board-revokes-a-non-resident's-operating-privilege-by-reason-of-a-conviction-or forfeiture-of-bail,-such-privilege-shall-remain-so-revoked-unless-such-person-shall-have-previously-given-or-shall-immediately~~

~~give-and-thereafter-maintain-proof-of-financial-responsibility-~~"

Section 11. Section 53-438, R.C.M. 1947, is amended to read as follows:

"53-438. Motor vehicle liability policy defined. (a) A "motor vehicle liability policy" as said term is used in this act shall mean an owner's or operator's policy of liability insurance, certified as provided in ~~section-53-436-or~~ section 53-437 as proof of financial responsibility and issued, except as otherwise provided in section 53-437, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

(b) Such owner's policy of liability insurance: 1. shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and 2. shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: ten thousand dollars (\$10,000) because of bodily injury to or death of one person in any one accident and subject to said limit for one person, and twenty thousand dollars (\$20,000) because of bodily injury to or death of two or more persons in any one accident, ~~-and-five-thousand-dollars (\$5,000)-because-of-injury-to-or-destruction-of-property-of others-in-any-one-accident.~~

(c) Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this act as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this act.

(e) Such motor vehicle liability policy need not insure any liability under any workmen's compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation,

maintenance or repair of any such motor vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein: 1. the liability of the insurance carrier with respect to the insurance required by this act shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy;

2. the satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage;

3. the insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision 2 of subsection (b) of this section;

4. the policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the act shall constitute the entire contract between the parties.

(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this act. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(h) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this act.

(i) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(k) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy."

Section 12. Section 53-448, R.C.M. 1947, is amended to read as follows:

"53-448. Surrender of license and registration. Any person whose license or registration shall have been suspended as herein provided, or whose policy of personal and property protection insurance ~~or bond, when required under this act,~~ shall have been canceled or terminated, or who shall neglect to furnish other proof upon request of the supervisor shall immediately return his license and registration to the supervisor. Motor vehicle insurers authorized to write personal and property protection insurance in this state shall inform the supervisor within fifteen (15) days of the cancellation of any policy of personal and property protection insurance issued to a resident of this state. Such information shall give the effective cancellation date of such personal and property protection insurance and shall designate by explicit description or appropriate reference all motor vehicles covered thereby and the names of all persons named in such personal and property protection insurance. If any person shall fail to return to the supervisor the license or registration as provided herein, the supervisor shall forthwith direct any peace officer or highway patrolman to secure possession thereof and to return the same to the supervisor. The supervisor shall thereupon forward the registration to the registrar."

Section 13. Section 53-449, R.C.M. 1947, is amended to read as follows:

"53-449. Violations of act -- penalties. (a) Failure to report an accident as required by section 53-421 shall be punished by a fine not in excess of twenty-five dollars (\$25), and in the event of injury or damage to the person or property of another in such accident, the supervisor shall suspend the license of the person failing to make such report, or the non-resident's operating privilege of such person, until such report has been filed and for such further period not to exceed thirty (30) days as the supervisor may fix.

(b) Any person who gives information required in a report or otherwise as provided for in section 53-421, knowing or having reason to believe that such information is false, ~~or who shall forge or, without authority, sign any evidence of proof of financial responsibility, or who files or offers for filing any such evidence of proof knowing or having reason to believe that it is forged or signed without authority~~ shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than one (1) year or both.

(c) Any person whose license or registration or non-resident's operating privilege has been suspended or revoked

under this act and who, during such suspension or revocation drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under this act, shall be fined not more than five hundred dollars (\$500.00) or imprisoned not exceeding six (6) months, or both.

(d) Any person willfully failing to return license or registration as required in section 53-448 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not to exceed thirty (30) days, or both.

(e) Proof of personal and property protection motor vehicle insurance coverage shall be furnished by filing with the county treasurer the written certificate of an insurance carrier authorized to do business in this state certifying that there is in effect a motor vehicle insurance policy prepaid for the period of one (1) year for the benefit of any person applying to register a motor vehicle or to obtain an operator's or chauffeur's license. Such certificate shall give the effective date of such motor vehicle insurance policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or appropriate reference all motor vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle.

(f) No motor vehicle shall be or continue to be registered in the name of any person unless such motor vehicle is designated in such certificate.

(g) The Montana highway patrol board shall cancel the operator's or chauffeur's license of any person who fails to file such certificate with the county treasurer.

(h) Any person who fails to file such certificate with the county treasurer shall not be permitted to apply for or renew an operator's or chauffeur's license.

(i) The Montana highway patrol may obtain physical possession of driver licenses, automobile registration certificates and automobile license plates which have been canceled as herein provided.

(j) Any person who fails to file such certificate with the county treasurer and who drives any motor vehicle upon any highway shall be fined not more than one thousand dollars (\$1,000) or imprisoned not to exceed thirty (30) days, or both."

Section 14. Section 53-450, R.C.M. 1947, is amended to read as follows:

"53-450. Exceptions. This act shall not apply with respect to any motor vehicle owned by the United States, this state or any political subdivision of this state or any municipality therein; nor, except for sections 53-421 and 53-443, with

respect to any motor vehicle which is subject to the provisions of section 8-113, requiring insurance or other security."

Section 15. Registration of vehicles and security for payment of benefits. (1) Security which is required for registered motor vehicles.

(a) The owner or registrant of a motor vehicle required to be registered in this state shall maintain security as defined by section 15, subsection (2) of this act in effect continuously throughout the registration period.

(b) Security is required for payment of benefits under personal protection insurance, property protection insurance and residual liability insurance as they are set forth in this chapter.

(c) For the purposes of this act, a motor vehicle is defined by section 53-418(6), R.C.M. 1947.

(2) Security required for the payment of benefits.

(a) Security for the payment of the benefits required by section 15, subsection (1) of this act may be provided with respect to any motor vehicle under a policy issued by an insurer duly authorized to transact business in this state which affords insurance for the payment of such benefits. Any policy of insurance represented or sold as providing the security required for registered motor vehicles under this chapter shall be deemed to provide insurance for the payment of such benefits.

(b) Security for the payment of such benefits may be provided with respect to any motor vehicle by any other method approved by the Montana highway patrol board as affording security equivalent to that afforded by a policy of insurance, provided proof of such security is filed and continuously maintained with the Montana highway patrol board throughout the registration period. The person filing such security shall have all of the obligations and rights of an insurer under this chapter. Whenever the context permits, the word "insurer", as used in this chapter, includes any such person.

(3) A nonresident owner or registrant of a motor vehicle not registered in this state shall not operate or permit such vehicle to be operated in this state for an aggregate of more than thirty (30) days in any calendar year unless he continuously maintains security for the payment of benefits in accordance with the terms of section 15, subsection (1) of this act.

(4) Any owner or registrant of a motor vehicle with respect to which security is required under section 15, subsection (1) of this act, who operates such motor vehicle or permits it to be operated upon a public highway in this state without having in full force and effect security complying with the terms of section 15, subsections (2) or (3) of this act, is guilty of a

misdemeanor. Any other person who operates such a motor vehicle upon a public highway in this state with the knowledge that the owner or registrant does not have such security in full force and effect is guilty of a misdemeanor. Each person convicted of a misdemeanor under the terms of this section shall have his license and, if an owner or registrant, his registration revoked and may be fined not more than one thousand dollars (\$1,000) or may be imprisoned for not more than thirty (30) days, or both.

Section 16. Terms and conditions of personal protection insurance are as follows:

(1) Liability for personal protection benefits.

(a) Under personal protection insurance the insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter.

(b) Personal protection insurance benefits are due under the provisions of this chapter without regard to fault.

(c) Accidental bodily injury.

(i) Bodily injury includes death resulting therefrom and damage to or loss of a person's prosthetic devices in connection with such injury.

(ii) Bodily injury is accidental as to one claiming personal protection insurance benefits unless suffered intentionally by the injured person or caused intentionally by the claimant. Even though a person knows that bodily injury is substantially certain to be caused by his act or omission, he does not cause or suffer injury intentionally if he acts or refrains from acting for the purpose of averting injury to property or to any person or persons including himself.

(d) Accidental bodily injury does not arise out of the ownership, operation, maintenance or use of a parked vehicle as a motor vehicle unless:

(i) the vehicle was parked in such a way as to cause unreasonable risk of the bodily injury which occurred, or

(ii) such injury was a direct result of physical contact with equipment permanently mounted on such vehicle, while such equipment was being operated or used, or property being lifted onto or lowered from such vehicle in the loading or unloading process, or

(iii) such injury was sustained by a person while occupying, entering into or alighting from such vehicle.

(2) Personal protection insurance benefits are payable for the following:

(a) Allowable expenses consist of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery or rehabilitation. Allowable expenses within personal protection insurance coverage shall not include:

(i) charges for a hospital room in excess of a reasonable and customary charge for semiprivate accommodations except when the injured person requires special or intensive care, or

(ii) charges for funeral and burial expenses to the extent that the total exceeds one thousand dollars (\$1,000).

(b) Work loss consisting of:

(i) loss of income from work an injured person would have performed had he not been injured, including loss of pension and social security benefit entitlements, and

(ii) expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those that, had he not been injured, an injured person would have performed, not for income but for the benefit of himself or of any dependent of his; provided, however, that work loss does not include any loss after the date on which the injured person dies.

Because the benefits received from personal protection insurance for loss of income are not taxable income, the benefits payable for such loss of income will be reduced fifteen percent (15%) unless the claimant presents to the insurer in support of his claim reasonable proof of a lower value of the income tax advantage in his case, in which event such lower value shall apply.

The benefits payable for work loss sustained in any one thirty (30) day period shall not exceed seven hundred fifty dollars (\$750), such maximum to apply pro rata to any lesser period of work loss.

(c) Survivors' loss consists of loss, after the date on which the deceased died, of contributions of tangible things of economic value (not including services) that persons who are dependents of the deceased at the time of his death would have received for support during their dependency from the deceased had he not suffered the accidental bodily injury causing death; and expenses reasonably incurred by such dependents during their dependency and after the date on which the deceased died in obtaining ordinary and necessary services in lieu of those that the deceased would have performed for their benefit had he not suffered the injury causing death. The benefits payable for survivors' loss in connection with the death of any person in any one thirty (30) day period shall not exceed seven hundred

fifty dollars (\$750) and shall not be payable beyond the normal life expectancy of the deceased, as determined by reference to the mortality tables designated by the commissioner of insurance for this purpose.

(d) The amount of all disability and survivor benefits a claimant recovers or is entitled to recover under the Social Security Act (U.S. Code, Title 42, sections 301 et seq.) because of accidental bodily injury shall be subtracted from the personal protection insurance benefits otherwise payable for the injury.

(e) An injured person is a natural person suffering accidental bodily injury.

(f) The following described persons shall be conclusively presumed to be dependents of a deceased person:

(i) a wife is dependent on a husband with whom she lives at the time of his death;

(ii) a husband is dependent on a wife with whom he lives at the time of her death;

(iii) any child while under the age of eighteen (18) years, or over said age but physically or mentally incapacitated from earning, is dependent on the parent with whom he is living or from whom he is receiving support regularly at the time of the death of such parent. In all other cases, questions of dependency and the extent of dependency shall be determined in accordance with the facts, as the facts may be at the time of the death.

(iv) The dependency of a surviving spouse shall terminate upon death or remarriage. The dependency of any other person shall terminate upon the death of such person and shall continue only so long as such person is:

(A) under the age of eighteen (18) years, or

(B) physically or mentally incapacitated from earning, or

(C) engaged full time in a formal program of academic or vocational education or training.

(g) Personal protection insurance benefits payable for accidental bodily injury accrue not when the injury occurs but rather as the allowable expense, work loss or survivors' loss is incurred.

(3) Personal protection insurance benefits are payable for accidental bodily injury suffered in an accident occurring out of this state, if the accident occurs within the United States, its territories and possessions or in Canada, and the person whose injury is the basis of the claim was, at the time of the accident,

a named insured under a personal protection insurance policy, his spouse, a relative of either domiciled in the same household, or an occupant of a vehicle involved in the accident whose owner or registrant was insured under a personal protection insurance policy or has provided security approved by the Montana highway patrol board under section 15, subsection (2)(b) of this act.

(4) Personal protection insurance benefits are payable to or for the benefit of the injured person or, in the event of his death, to or for the benefit of his dependents. If an insurer in good faith pays the personal protection insurance benefits required by this act to or for the benefit of a person who it believes is entitled to such benefits, such payment shall discharge the insurer's liability to the extent of such payments unless the insurer has been notified in writing of the claim of some other person. If there is doubt about the proper person to receive such benefits or the proper apportionment among the persons entitled thereto, the insurer, the claimant or any other interested person may apply to the court for an appropriate order. The court shall have all power necessary to designate the payees and to make an equitable apportionment, taking into account the relationship of the payees to the injured person and such other factors as the court considers appropriate. In the absence of a court order directing otherwise the insurer may pay:

(a) to the dependent of the injured person, the personal protection insurance benefits accrued prior to his death without the appointment of an administrator or executor,

(b) to the surviving spouse, the personal protection insurance benefits due any dependent children living with such spouse.

(5) A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident,

(a) such person was using a motor vehicle which he had taken unlawfully, unless he reasonably believed that he was entitled to take and use the vehicle, or

(b) such person was the owner or registrant of a motor vehicle involved in the accident with respect to which the security required by section 15, subsection (2) of this act was not in effect, or

(c) such person was not a resident of this state, and was an occupant of a motor vehicle not registered in this state, and was not insured by an insurer which has filed a certification in compliance with section 21, subsection (5) of this act.

(6) Policies which are applicable to an accident.

(a) Except as provided in paragraphs (b) and (c) of this subsection, each personal protection insurance policy shall apply to accidental bodily injury to the person named in such policy, his spouse, and any relative of either domiciled in the same household. When personal protection insurance benefits are payable to or for the benefit of an injured person under his own policy and would also be payable under the policy of his spouse, relative or relative's spouse, the injured person's insurer shall pay all of the benefits and shall not be entitled to recoupment from the other insurer.

(b) Any person suffering accidental bodily injury while an operator or a passenger of a motor vehicle operated in the business of transporting passengers shall receive the personal protection insurance benefits to which he is entitled from the insurer of such motor vehicle.

(c) Any employee, his spouse or any relative of either domiciled in the same household who suffers accidental bodily injury while an occupant of a motor vehicle owned or registered by the employer of such employee shall receive personal protection insurance benefits to which he is entitled from the insurer of the furnished vehicle.

(d) Except as provided in paragraphs (a) through (c) of this subsection, any person suffering accidental bodily injury while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:

(i) the insurer of the owner or registrant of the vehicle occupied.

(ii) the insurer of the operator of the vehicle occupied.

(e) Persons not occupying any vehicle.

(i) Except as provided in paragraph (a) of this subsection, any person suffering accidental bodily injury while not an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:

(A) insurers of owners or registrants of motor vehicles involved in the accident.

(B) insurers of operators of motor vehicles involved in the accident.

(f) Any limitation upon the amount of personal protection insurance benefits available because of accidental bodily injury to one person arising from one motor vehicle accident shall be determined without regard to the number of policies applicable to the accident.

(7) When two or more insurers are in the same order of priority to provide personal protection insurance benefits any insurer paying benefits due is entitled to partial recoupment from the other insurer or insurers in the same order of priority, together with a reasonable amount of partial recoupment of the expense of processing the claim, in order to accomplish equitable distribution of the loss among such insurers.

(8) Special damages:

(a) No person shall bring a bodily injury action arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle within the scope of this chapter for special damages which have been compensated for by personal protection insurance, or would have been compensated for if the injured party had carried the personal protection insurance required by this chapter.

(b) Any special damages not compensated for by the personal protection insurance required by this chapter shall be recoverable.

(c) Out of hearing of the jury evidence of compensation for special damages shall be submitted to the court, which shall make the determination as to the amount recoverable under subsection (b).

(d) For the purpose of the deduction set forth in (c) above, special damages shall include the allowable expenses referred to in section 16(2) of this chapter.

(9) Insurers' rights of reimbursement for accidents involving commercial vehicles are as follows:

(a) Any insurer, other than the insurer of a motor vehicle operated in the business of transporting passengers, which pays personal protection insurance benefits with respect to any person suffering accidental bodily injury in an accident involving a vehicle designed or primarily used to transport property or equipment over a public highway shall have a right of reimbursement from the personal protection insurer of such vehicle; provided that the total reimbursement obligation of the insurer of such vehicle shall not exceed one million dollars (\$1,000,000) with respect to all accidental bodily injury resulting from such accident. When two (2) or more personal protection insurers have an obligation to make reimbursements under this paragraph with respect to the same accident, they shall share the obligation equally, but the limitation of the total reimbursement obligation stated above applies separately to each.

(b) For purposes of this paragraph, a vehicle shall be considered to be involved in an accident only if there is physical contact of such vehicle with the person injured or the vehicle which he is occupying, or with another vehicle or object

involved in the accident or, the operator of such vehicle is convicted of a traffic violation which contributed to the accident.

(10) Primary and collateral sources of indemnity are as follows:

(a) The personal protection insurer shall have the primary obligation to indemnify for the elements of loss as defined in section 16, subsection (2)(a) of this act, because of accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle. Payment by such insurer of personal protection insurance benefits with respect to such injury shall operate to discharge, to the extent of such payment, the obligations of any person, organization, insurer or governmental agency to indemnify against such loss under any workmen's compensation, unemployment compensation or disability benefits law or any similar law. In the event the personal protection insurer fails to pay any of such benefits due under this chapter with respect to such injury, then the person, organization, insurer or governmental agency shall have, with respect to any payment it may be obligated to make, a lien upon the obligation of the personal protection insurer, by giving prior written notice of its intention to make payment for such injury.

(b) Any person, organization or insurer may include in any contract or benefit plan which it offers or sells, a provision excluding benefits for accidental bodily injury which are payable under personal protection insurance.

Section 17. Terms and conditions of property protection insurance. (1) The following factors pertain to liability for property protection insurance benefits:

(a) Under property protection insurance the insurer is liable to pay benefits for accidental damage to tangible property arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle subject to the provisions of this section.

(b) Property protection insurance benefits are due under the conditions stated in this chapter without regard to fault.

(2) Explanations.

(a) Accidental damage to tangible property is:

(i) Damage to tangible property consists of physical injury to or destruction of such property and loss of use of such property so injured or destroyed.

(ii) Damage to tangible property is accidental, as to one claiming property protection insurance benefits, unless it is suffered or caused intentionally by the claimant. Even though

a person knows that damage to tangible property is substantially certain to be caused by his act or omission, he does not cause or suffer such damage intentionally if he acts or refrains from acting for the purpose of averting injury to any person or persons, including himself, or for the purpose of averting damage to tangible property.

(b) Property protection insurance benefits consist of the lesser of reasonable repair costs or replacement costs less depreciation and, where applicable, the value of loss of use, provided however, that the property protection insurance benefits paid under one policy for damage to all tangible property arising from one accident shall not exceed five hundred thousand dollars (\$500,000).

(3) Exclusions are as follows:

(a) Damage to the following kinds of property is excluded from property protection insurance benefits:

(i) Motor vehicles and their contents;

(ii) Property owned by a person named in a property protection insurance policy, his spouse or a relative of either domiciled in the same household, if the person named, his spouse or such relative was the owner, registrant or operator of a vehicle involved in the motor vehicle accident out of which the property damage arose.

(b) Property protection insurance benefits are not payable for property damage arising from motor vehicle accidents occurring out of this state.

(4) Persons suffering accidental property damage shall claim property protection insurance benefits from insurers in the following order of priority:

(a) insurers of owners or registrants of vehicles designed and primarily used to transport property or equipment over a public highway, which are involved in the accident out of which the property damage arose;

(b) insurers of owners or registrants of other type vehicles involved in the accident;

(c) insurers of operators of other type vehicles involved in the accident.

(5) The provisions for distribution of loss and for reimbursement and indemnification among personal protection insurers as set forth in section 16, subsections (7) and (8)(a) and (b) of this act also apply to property protection insurers.

Section 18. Terms and conditions of residual liability insurance. Residual liability insurance shall cover bodily injury

and property damage which occurs outside this state and within the United States, its territories and possessions or in Canada. Such insurance shall afford coverage equivalent to that required as evidence of automobile liability insurance under the financial responsibility laws of the place in which the injury or damage occurs.

Section 19. (1) An insurer may require written notice to be given as soon as practicable after an accident involving a motor vehicle with respect to which the policy affords the security required by this chapter.

(2) Personal protection insurance benefits are payable periodically.

(a) Personal protection insurance benefits are payable as loss accrues.

(b) Personal protection insurance benefits are overdue if readily determinable claims are not paid within fifteen (15) days after the insurer receives reasonable proof of the fact and of the amount of loss sustained. Any overdue claim must be reported to the insurance commissioner by the insurer. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within fifteen (15) days after such proof is received by the insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within fifteen (15) days after such proof is received by the insurer. For the purpose of calculating the extent to which any benefits are overdue, payment shall be treated as made on the date a draft or other valid instrument was placed in the United States mail in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery.

(c) All overdue payments bear simple interest at the rate of six percent (6%) per year.

(3) An agreement for assignment of any rights to benefits payable in the future is unenforceable.

(4) Rights and obligations arising under personal protection insurance, either with respect to a claim for a limited period of time or with respect to all future loss arising from an accidental bodily injury, may be discharged by:

(a) lump sum settlement for an amount not exceeding one thousand dollars (\$1,000), or

(b) settlement for a larger lump sum with judicial approval upon a finding that the settlement will contribute substantially to the welfare or rehabilitation of the injured person or his dependents.

(5) Actions are limited.

(a) No action for the recovery of personal protection insurance benefits payable under this act for accidental bodily injury may be commenced later than two (2) years after the date of the accident causing such injury unless written notice of injury as provided herein has been given to the insurer within two (2) years after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for such injury. If such a notice has been given or such a payment has been made, the action may be commenced at any time within a period of two (2) years after the most recent allowable expense, work loss or survivor's loss has been incurred; provided, however, that the claimant may not recover benefits for any portion of the loss incurred more than two (2) years prior to the date on which the action was commenced. The notice of injury required by this paragraph may be given to the insurer or any of its authorized agents by any person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.

(b) No action for the recovery of property protection insurance benefits shall be commenced later than two (2) years after the accident.

(6) Upon trial of an action for personal protection insurance benefits, or upon retrial pursuant to an application filed under the terms of this section, judgment shall be entered as to all benefits to come due thereafter during such periods as to which the court finds that a reasonably certain determination of future loss can be made in the light of the evidence.

(a) A judgment awarding personal protection insurance benefits to come due more than five (5) years after the date of the judgment may be set aside upon application of an interested party presented for hearing not sooner than five (5) years after the date of the judgment. Upon such application, the only issue to be tried is the amount of any unpaid benefits coming due not less than five (5) years after the date of the judgment and not more than one (1) year before the date of the application, and that issue shall be the subject of a new trial.

(7) Recoverable attorney's fees are:

(a) An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney's fees shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.

(b) Within the discretion of the court, an insurer may be allowed an award of a reasonable sum against a claimant as an attorney's fee for the insurer's attorney in defense against

a claim that was in some respect fraudulent or so excessive as to have no reasonable foundation. To the extent that any personal or property protection insurance benefits are then due or thereafter come due to the claimant because of loss resulting from the injury on which the claim is based, such a fee may be treated as an offset against such benefits; also, judgment may be entered against the claimant for any amount of a fee awarded against him and not offset in this way or otherwise paid.

Section 20. Mental and physical examination of injured person. (1) Whenever the mental or physical condition of a person is material to any claim that has been or may be made for past or future personal protection insurance benefits, the person shall submit to mental or physical examination by a physician or physicians. Personal protection insurers are authorized to include reasonable provisions in personal protection insurance policies for mental and physical examination of those claiming personal protection insurance benefits.

(2) If requested by the person examined, a party causing an examination to be made shall deliver to him a copy of every written report concerning the examination rendered by an examining physician, at least one (1) of which reports must set out his findings and conclusions in detail. After such request and delivery, the party causing the examination to be made is entitled upon request to receive from the person examined every written report available to him (or his representative) concerning any examination, previously or thereafter made, of the same mental or physical condition. By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the person examined waives any privilege he may have, in relation to the claim for benefits, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(3) A court may make such orders in regard to the refusal to comply with section 20, subsections (1) and (2) of this act as are just, except that no order shall be entered directing the arrest of any person for disobeying an order to submit to a physical or mental examination. The orders that may be made in regard to such a refusal include, but are not limited to, the following:

(a) an order that the mental or physical condition of the disobedient person shall be taken to be established for the purposes of the claim in accordance with the contention of the party obtaining the order;

(b) an order refusing to allow the disobedient person to support or oppose designated claims or defenses, or prohibiting him from introducing evidence of mental or physical condition;

(c) an order rendering judgment by default against the

disobedient person as to his entire claim or a designated part of it;

(d) an order requiring the disobedient person to reimburse the insurer for reasonable attorneys' fees and expenses incurred in defense against the claim;

(e) an order requiring delivery of a report, in conformity with section 20, subsection (2) of this act, on such terms as are just, and if a physician fails or refuses to make such report a court may exclude his testimony if offered at trial.

(4) The insurer, whose policy is applicable to the accidental bodily injury, may propose and is responsible for rehabilitation procedures or treatment, and rehabilitative occupational training for the injured person. Any such procedures, treatment or course of rehabilitation must meet the following standards:

(a) any specified procedure or treatment, whether or not involving surgery, must be recognized and medically accepted;

(b) any specified course of occupational training must be a recognized form of training and be reasonable and appropriate for the particular case;

(c) any specified procedure, treatment or training must contribute substantially to rehabilitation;

(d) the cost of such procedure, treatment or training must be reasonable in relation to its probable rehabilitative effects.

(5) After a hearing upon application by any interested person and reasonable notice to all other interested persons, and upon findings, supported by evidence, as stated in section 20, subsection (4) of this act, and further findings that the injured person has refused or has by his conduct caused the insurer reasonably to believe that he may refuse to submit to such procedure, treatment, or training, and, that he does not have reasonable grounds to continue such refusal, a court may enter an order invoking reasonable sanctions against the injured person and others whose claims are based on his accidental bodily injury.

(a) In determining whether an injured person has reasonable grounds for continuing refusal to submit to the specified procedure, treatment, or training, the court shall take into account, among all other relevant factors, the extent of the probable benefit, the attendant risks, the extent to which the procedure, treatment, or training is or is not recognized as standard and customary, and whether the imposition of sanctions because of the injured person's refusal would abridge his right to the free exercise of his religion.

(b) The sanctions that may be involved in such an order

include, but are not limited to, the following:

(i) an order that personal protection insurance benefits be reduced or terminated at such time as necessary to limit recovery of benefits to an amount equal to the benefits that in reasonable probability would have been due had the injured person submitted to such rehabilitative procedure, treatment, or training;

(ii) an order that the physical or mental condition of the injured person shall be taken to be established for the purposes of the claim in accordance with the contention of the insurer;

(iii) an order that, if the insurer elects to pay a specified lump sum (found to be fair and reasonable compensation in lieu of benefits that in reasonable probability would be due if the injured person submitted to the specified procedure, treatment, or training), it shall be fully discharged from all liability arising from the accidental bodily injury.

(6) Any physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for an accidental bodily injury covered by personal protection insurance, and any person or institution providing rehabilitative occupational training following such an injury, may charge a reasonable amount for the products, services, and accommodations rendered. In no event, however, may such a charge be in excess of the amount the person or institution customarily charges for like products, services, and accommodations in cases involving no insurance.

(7) Procedures for discovery of facts about an injured person are as follows:

(a) Every employer shall, if a request is made by a personal protection insurer against whom a claim has been made, furnish forthwith, in a form approved by the commissioner of insurance, a sworn statement of the earnings since the time of the accidental bodily injury and for a reasonable period before the injury, of the person upon whose injury the claim is based.

(b) Every physician, hospital, clinic, or other medical institution providing, before or after an accidental bodily injury upon which a claim for personal protection insurance benefits is based, any products, services, or accommodations in relation to that or any other injury, or in relation to a condition claimed to be connected with that or any other injury, shall, if requested to do so by the insurer against whom the claim has been made, furnish forthwith a written report of the history, condition, treatment, and dates and costs of such treatment of the injured person, and produce forthwith and permit the inspection and copying of his or its records regarding such history, condition, treatment, and dates and costs of

treatment.

(c) In the event of any dispute regarding an insurer's right to discovery of facts about an injured person's earnings or about his history, condition, treatment, and dates and costs of such treatment, a court may enter an order for such discovery. The order may be made only on motion for good cause shown and upon notice to all persons having an interest, and it shall specify the time, place, manner, conditions, and scope of the discovery. A court may, in order to protect against annoyance, embarrassment, or oppression, as justice requires, enter an order refusing discovery or specifying conditions of discovery and may order payments of costs and expenses of the proceedings, including reasonable fees for the appearance of attorneys at the proceedings, as justice requires.

Section 21. Authority, obligations and elections of insurers. (1) Motor vehicle liability insurers authorized to write personal and property protection and residual liability insurance. Every insurer licensed to write motor vehicle liability insurance in this state is authorized to offer personal and property protection insurance and residual liability insurance as described in this chapter.

(2) If the insured so elects, the insurer writing personal and property protection insurance shall also provide insurance for accidental loss of or damage to motor vehicles owned by the insured, regardless of fault, subject to any deductible stated on the face of the policy and to a limit not less than the actual cash value of the vehicle, and subject to any exclusion as to damage caused otherwise than by collision or upset.

(3) Whenever accidental damage to a motor vehicle and its contents arises out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, an owner, registrant, operator or occupant of a motor vehicle involved in the accident and persons or organizations legally responsible for his acts or omissions are exempt from tort liability for the property damage. This exemption shall apply wherever the law of this state is controlling in determining tort liability.

(4) If the insured so elects, the insurer writing personal and property protection insurance may also provide added protection insurance; insuring against all or part of any amount of loss that would be excluded by the limits on hospital charges, funeral and burial expenses and monthly work loss set forth in section 16, subsection (2) of this act, or indemnifying according to a reasonable schedule for a permanent loss of fifty percent (50%) or more of the functions of a vital part of the body or a substantial and permanent disfigurement.

(5) Insurer's certification to subject out-of-state policies to the personal and property protection system for in-state injuries and property damage is required.

(a) Every insurer licensed to write motor vehicle liability insurance and personal and property protection insurance in this state is required to file and maintain a written certification that any accidental bodily injury or property damage occurring in this state arising from the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle by out-of-state residents who are insured under its motor vehicle liability insurance policies, shall be subject to the personal and property protection insurance system set forth in this chapter.

(b) Any non-admitted insurer may voluntarily file the certification described in subsection (a).

(c) When a certification filed under subsection (a) or (b) applies to accidental bodily injury or property damage, the insurer and its insureds with respect to that injury or damage have all the rights and immunities under this act for personal and property protection insureds, and claimants have all the rights and benefits of personal and property protection insurance claimants, including the right to receive benefits from the electing insurer as if it were an insurer of personal and property protection insurance applicable to the accidental bodily injury or property damage.

(6) Rates and classifications for personal and property protection insurance, including added protection coverage, shall be subject to the law regulating casualty insurance rates in this state.

Section 22. (1) An assigned claims bureau and plan shall be organized and maintained. Insurers authorized to write personal protection insurance in this state are authorized, subject to approval and regulation by the commissioner of insurance, to organize and maintain an assigned claims bureau and an assigned claims plan, and to formulate and from time to time amend rules and regulations for their operations and the assessment of costs on a fair and equitable basis consistent with the provisions of this chapter. In default of the organization and continued maintenance of an assigned claims bureau and assigned claims plan, the commissioner of insurance shall organize and maintain such a bureau and plan.

(2) Every insurer writing personal protection insurance in this state is required to participate in the assigned claims bureau and the assigned claims plan.

(3) Persons entitled to claim through the assigned claims plan and the benefits to which they are entitled are as follows:

(a) Any person entitled to claim because of accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through the assigned claims plan established pursuant to this chapter if:

(i) no personal protection insurance is applicable to the injury, or

(ii) no personal protection insurance applicable to the injury can be identified, or

(iii) the only identifiable personal protection insurance applicable to the injury is, because of financial inability of one or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed (in which last case all unpaid benefits due or coming due are subject to being collected under the assigned claims plan, and the insurer to which the claim is assigned, or the bureau of assigned claims if the claim is assigned to it, is entitled to reimbursement from the defaulting insurers to the extent of their financial responsibility).

(b) A person who because of a limitation or exclusion in section 16 is disqualified from receiving personal protection insurance benefits under a policy otherwise applying to his accidental bodily injury is also disqualified from receiving benefits under the assigned claims plan.

(4) A person claiming through the assigned claims plan shall notify the bureau of his claim within the time that would have been allowed for filing an action for personal protection insurance benefits had there been in effect identifiable coverage applicable to the claim. The bureau shall promptly assign the claim in accordance with the plan and notify the claimant of the identity and address of the insurer to which the claim is assigned (or of the bureau if the claim is assigned to it). No action by the claimant shall be commenced later than thirty (30) days after receipt of notice of the assignment or the last date on which the action could have been commenced against an insurer of identifiable coverage applicable to the claim, whichever is later.

(5) The assignment of claims shall be made according to rules and regulations that assure fair allocation of the burden of assigned claims among insurers doing business in the state on a basis reasonably related to the volume of personal protection insurance they write. Insurers to whom claims have been assigned shall make prompt payment of loss in accordance with the terms of this act and shall thereupon be entitled to reimbursement by the bureau for such payments and the established loss adjustment costs. The insurer to whom a claim is assigned shall preserve and enforce all rights to indemnity or reimbursement against third parties and account to the assigned claims bureau therefor.

(6) Losses paid, the cost of adjusting such losses and costs incurred in the operation of the bureau shall be assessed against insurers according to rules and regulations that assure fair allocation among insurers writing personal protection insurance in the state, on a basis reasonably related to the volume

of personal protection insurance they write.

(7) All reasonable costs incurred in the handling and disposition of assigned claims (including amounts paid pursuant to assessments under section 22, subsection (6) of this act) shall be taken into account in making and regulating rates for personal protection insurance.

(8) The insurer obligated to pay personal protection insurance benefits for accidental bodily injury to a person occupying an uninsured motor vehicle or to the spouse or relative resident in the household of the owner or registrant of an uninsured motor vehicle shall be entitled to recover all such benefits paid and appropriate loss adjustment costs incurred from the owner or registrant of the uninsured motor vehicle or from his estate. The failure of such person to make payment within thirty (30) days shall be grounds for suspension or revocation of his motor vehicle registration and operator's license. An uninsured motor vehicle for the purpose of this subsection is a motor vehicle with respect to which no security as required by section 15 of this act is in effect at the time of the accident.

Section 23. If any provisions of this chapter or the application thereof to any person or circumstance is held unconstitutional, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby, and it shall be conclusively presumed that the legislature would have enacted the remainder of this chapter without such invalid or unconstitutional provision.

Section 24. Sections 53-422 through 53-427, 53-435, 53-436, 53-439 through 53-447, 53-452 and 53-455, R.C.M. 1947, are repealed.

Section 25. This act shall take effect with respect to motor vehicle accidents occurring on or after January 1, 1974.

